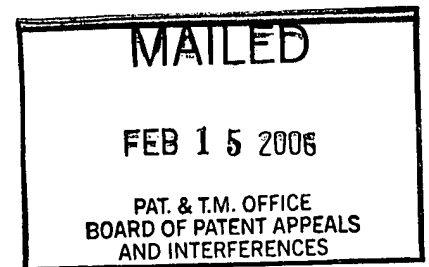


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JENNIFER L. SCHMITKE, DONGHAO CHEN, RICHARD P. BATYCKY,
DAVID A. EDWARDS and JEFFREY S. HRKACH

Application No. 09/888,126



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on February 6, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed June 28, 2005 has used the format set forth in 37 CFR § 1.192(c). However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Accordingly, the

appeal brief filed on June 28, 2005 does not comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

(vii) *Argument.* Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group.

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the

appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed June 28, 2005:

- 1) "Summary of claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v);
- 2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi);
- 3) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 4) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute appeal brief that is in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

Application No. 09/888,126

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.


Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of June 28, 2005 defective; 2) request appellants to file a substitute appeal brief in compliance with 37 CFR § 41.37; 3) if necessary, vacate the Examiner's Answer filed September 20, 2005 in response the substitute appeal brief and submit a revised Examiner's Answer; and 4) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


Craig R. Feinberg
Program and Resource Administrator
(571) 272-9797

cc: ELMORE PATENT LAW GROUP, PC
209 MAIN STREET
N. CHELMSFORD, MA 01863

CRF/lbg